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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,773	05/13/2005	John Forsyth Robertson	49409-0041 (315804)	1789
23370	7590	09/27/2010		
JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET SUITE 2800 ATLANTA, GA 30309			EXAMINER BRISTOL, LYNN ANNE	
			ART UNIT 1643	PAPER NUMBER
			MAIL DATE 09/27/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

***Advisory Action  
Before the Filing of an Appeal Brief***

**Application No.**

10/534,773

**Applicant(s)**

ROBERTSON ET AL.

**Examiner**

LYNN BRISTOL

**Art Unit**

1643

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 30 August 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_ (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1-8, 11, 12, 15-18, 39-41, 43 and 44.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) \_\_\_\_\_.

13. ☒ Other: a) The rejection of the claims under 102(b) over Robertson is maintained.

In the interview of 8/25/10, Applicants explained the difference between patient sample (bodily fluids) in Robertson as being the source from which the auto-antibodies are detected from the patient and are measured versus the source of the tumor proteins being from the proximity to the tumor in a cavity or space. Applicants emphasized that the second step of the method: isolating the tumor antigens, is the critical inventive step and that the Robertson reference did not contemplate this step.

Irrespective of whether the Robertson reference did or did not specifically contemplate the second step of the claimed method, Robertson meets the requirements of a 102 reference for teaching the method steps. The examiner has re-searched the Robertson WO reference using the search terms "biological fluid" (1 hit) and "bodily fluid" (36 hits). After careful inspection of the hits for "bodily fluid", Robertson does not distinguish between a "bodily fluid" being the source for the tumor antigenic protein and the test sample for the auto-antibody against the tumor antigen. "Bodily fluids" are defined on p. 6, lines 6-9. The source of the tumor marker proteins are described as being from "bodily fluids" on p. 8, lines 21-27. The auto-antibodies from patient samples are defined as being from "bodily fluids" (p. 6, lines 1-6). Thus, the conclusion to be drawn is that the test sample from the patient and the biological fluid containing the tumor markers can be one in the same as defined by a "bodily fluid" under Robertson.

- b) The rejection of the claims under 112, 1st paragraph (enablement and written description) is maintained.

As discussed in the interview of 8/25/10, the tumor marker proteins must meet the following structure/function criteria under the instant claims: i) found in bodily fluid/enzyme activity around a tumor, ii) never expressed by the tumor, iii) altered forms of a wild type tumor protein

/Lynn Bristol/  
Primary Examiner